

**Wells Fargo Armored Services Corp. and Dennis Strimike and Howard Simms and George J. Linko and John Wells and Ralph Mariani, Jr.**  
Cases 34-CA-6655, 34-CA-6670, 34-CA-6714, 34-CA-6885, and 34-CA-6886

October 31, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

On July 28, 1995, Administrative Law Judge Wallace H. Nations issued the attached decision. Charging Party John Wells filed exceptions,<sup>1</sup> and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Wells Fargo Armored Services Corp., Bloomfield, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The exceptions are limited to the judge's dismissal of the complaint allegation that the Respondent violated the Act by discharging Wells.

<sup>2</sup> Charging Party Wells has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

*Darryl Hale, Esq.*, for the General Counsel.

*David M. Vaughan, Esq.*, of Atlanta, Georgia, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

WALLACE H. NATIONS, Administrative Law Judge. Based on charges filed by Dennis Strimike on July 28, 1994,<sup>1</sup> Howard Simms on August 8, and George Linko on September 8, the Regional Director for Region 34 issued a consolidated complaint and notice of hearing on October 28 that alleges that Wells Fargo Armored Services Corp. (Wells Fargo or Respondent) has engaged in conduct in violation of Section 8(a)(1) and (3) of the National Labor Relations Act. Re-

spondent filed an answer wherein it admits the jurisdictional allegations and certain other facts, but denies that it committed any unfair labor practices.

Hearing was held in these matter on January 23-26, 1995, in Hartford, Connecticut. Subsequent to the hearing, on February 10, 1995, the Regional Director for Region 34 issued an order consolidating cases, consolidated complaint, and notice of hearing in Cases 34-CA-6885 and 34-CA-6886, which alleges, inter alia, that Respondent has engaged in conduct in violation of Section 8(a)(1), (3), and (4) of the Act by discharging a person who appeared as a witness in the hearing noted above. Counsel for the General Counsel in these cases filed a motion to reopen the record in Cases 34-CA-6655, 34-CA-6670, and 34-CA-6714 and consolidate them for hearing with Cases 34-CA-6885 and 34-CA-6886. The motion was unopposed and I granted it by order dated February 10, 1995. Further hearing was held in this record in Hartford, Connecticut, on April 25 and 26, 1995. Briefs were received from the parties on June 12, 1995. Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

As pertinent, Respondent, a corporation, maintains an office and place of business in Bloomfield, Connecticut, where it is engaged in the secured transportation and storage of moneys and other valuables for various customers. It has admitted the jurisdictional allegations of the consolidated complaint and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE INVOLVED LABOR ORGANIZATION**

It is admitted and I find that United Armed Guards of America (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

The consolidated complaint alleges that Respondent violated Section 8(a)(1) of the Act by

1. About June 15, by Branch Manager Dominick Daniel Riley, threatening employees with loss of employment because of their union and other protected concerted activities (Strimike).<sup>2</sup>

2. About June 20, by Riley and Vault Supervisor Ernest Small, creating an impression among its employees that their union activities were under surveillance by Respondent (Simms).

3. About August 9, by Area Manager Douglas Jack:

(a) Threatening employees with unspecified reprisals because of their union and other protected concerted activities (Linko).

(b) Interrogating employees regarding their union sympathies (Linko).

4. About August 17, by Jack, interrogating employees regarding their union sympathies (Linko).

<sup>2</sup> The names in parentheses following the complaint allegations are the persons on whose testimony the allegation is based.

<sup>1</sup> All dates are in 1994 unless otherwise noted.

5. About January 20, 1995, by Jack, threatening employees with loss of employment because of their union and other protected concerted activities (Mariani).

The consolidated complaint further alleges that Respondent violated Section 8(a)(1) and (3) of the Act by:

1. Since about June 20, enforcing a rule prohibiting both the messenger guard and driver guard from sitting together in the front of a armored vehicle (Strimike).

2. On June 30, suspending, and on July 29, discharging its employee Howard Simms.

3. On July 12, discharging its employee Dennis Strimike.

4. On August 31, discharging its employee George Linko.

Lastly, the consolidated complaint alleges that Respondent violated Section 8(a)(1), (3), and (4) of the Act by, about January 20, 1995, discharging its employee John Wells, because Wells joined, supported, or assisted the Union, and because Wells filed charges or gave testimony under the Act. All of these allegations will be discussed below under appropriate subheadings.

#### *A. Background*

Respondent provides a number of security related services to the public throughout the country. As pertinent to this proceeding, it has a branch facility in Bloomfield, Connecticut, where it provides storage in a large secured vault area for moneys and other valuables, and secured transportation of these valuables. Since April 3, the facility has been operated under the direction of Area Manager Douglas Jack.<sup>3</sup> His superiors are Senior Vice President of the Northeast Joe Marinelli and Security Agent William Cianci. Reporting to Jack are the Branch Manager Dominick Daniel (Dan) Riley<sup>4</sup> and until August, Vault Supervisor Ernest Small. Small transferred to another branch facility in August. It was intended his place be taken by Dennis Molen, whom Respondent asserts was in training to replace Small. Molen left the employ of Respondent, however, at about the same time as Small. Respondent contends that it did not then fill Small's position, rather relying on Jack and Riley to supervise vault custodians, including Sal Urso and Louis Ramos. The General Counsel asserts that Urso and Ramos are supervisors within the meaning of the Act, and this contention will be discussed at a later point. The Bloomfield branch has an unsecured office area where Jack's office is located. This office area abuts the very secure vault building. A number of secured vehicles are operated from this facility, of the type one recognizes as armored trucks.

As of the time he took control of the facility in April, Jack described it as being out of control. According to him, it was out of compliance with regard to regulations, rules, with personnel not in uniform, personnel carrying prohibited personal weapons, and personnel not wearing the mandatory bullet-proof vests. The fleet of trucks was in disarray, the vault's coin inventory was off, there were losses or thefts occurring that were unidentified or covered up, and the branch was losing about \$67,000 a month, while providing "terrible" customer service. Jack's instructions were to get the branch back

in order and attempt to secure new customers for the ones the branch had lost. To get the branch back in order, Jack undertook to bring the operation into compliance with the Company's rules.

At about the time of Jack's arrival and the beginning of his efforts to bring the branch into compliance, a movement began among the drivers, guards, and vault employees to secure union representation. According to the architect of this effort, alleged discriminatee Howard Simms, a guard, the employees at the branch were dissatisfied with wages and working conditions. The involved Union represented a unit of Respondent's employees at a branch in Lyndhurst, New Jersey.<sup>5</sup> Simms contacted an official with that local and secured information and cards to launch an organizing drive at the Bloomfield branch. The drive to get cards signed started around the end of June with Simms, fellow alleged discriminatee Dennis Strimike, guard Richard Russell, and a person named Regensburger who is no longer employed by Respondent, engaging in this effort. A sufficient number of signed cards were collected in short order and a representation petition was filed with the Board on July 6. An election was held on August 18, with the Union winning by a vote of 27 to 0, with 2 challenged votes. There were 48 eligible voters for this election.

Respondent did not conduct a campaign in opposition to the organizing drive. There were no meetings held with employees, no letters to employees, no notices posted, no response at all. The only evidence of union animus that can be found in this record are the alleged violations of Section 8(a)(1) and of course, if one believes they were discriminatory, the discharges. The person who discharged Strimike, Simms, and Wells was Jack. He denies any knowledge that these employees or Linko was in support of the Union or had engaged in any union or other protected activity at the time they were terminated. Jack denied knowledge of the identity of the employees who voted in the election, a sure sign of union support as the vote was unanimous in favor of the Union. He also testified that he did not care who was supportive of the Union because he had been instructed by higher management that there would be no antiunion campaign and the Company would not protest the Union coming into the branch. The Respondent took this stance with regard to the campaign even though the branch was in serious financial difficulty, a fact which was noted to employees in safety meetings.<sup>6</sup>

<sup>5</sup> The Lyndhurst branch is one like Bloomfield. Respondent has a 3-year collective-bargaining agreement with the Union covering a unit of Respondent's employees at that facility. The agreement had been in a place more than a year at the time of hearing in this case.

<sup>6</sup> Ralph Mariani, a driver hired in May, testified that in June or July, Jack asked what he thought about the Union while Mariani was talking with Jack in his office. Mariani testified that he replied that the Union has its good and bad points. According to Mariani, Jack then said, "Well, I don't know, I don't have any money." Mariani is presently an officer of the Union and a Charging Party in this proceeding. Jack testified that Mariani's assertions with regard to the above conversation are "absolutely, flatly ridiculous. There was no campaign that was put on, there was absolutely no issues that we were trying to force down anybody's throat with regard to the Union." He denied that such a conversation took place. I credit Jack's denial. I find it highly unlikely that Jack would bring up the matter of the Union with Mariani, a new employee, when he did not

*Continued*

<sup>3</sup> In February 1995, a date subsequent to any event in issue, Jack was promoted to another position in New Jersey.

<sup>4</sup> In about June, Riley replaced the former Branch Manager Varney Tucker. In February 1995, Riley was promoted to the position of area manager, replacing Jack.

Riley likewise denied knowledge of the union sympathies of Strimike, Simms, Wells, or Linko prior to their discharges or in the case of Linko, his resignation.

*B. The Alleged Unlawful Discharges of Dennis Strimike, Howard Simms, John Wells, and George Linko*

It is well settled that the General Counsel has the burden of establishing a prima facie case proving that the discriminatees were discharged because they engaged in protected concerted activities and/or union activities. The General Counsel must prove the following elements: (1) the discriminatees' union or protected activity; (2) the employer's knowledge of this activity; and (3) the employer's animus or hostility toward the discriminatees' union activity. *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Once the General Counsel has established a prima facie case showing that protected activity was a motivating factor in the discriminatory conduct, the burden shifts to the employer to demonstrate by a preponderance of the evidence that the same action would have taken place absent the protected activity.

This case is unusual in my experience in that Respondent did not take a position with respect to the union organizing campaign and did nothing overt to oppose it. There was no antiunion campaign and there was no statement by management made in any disseminated form that would indicate its opposition to the Union. The Union already represents at least one other branch facility of Respondent and the parties reached an initial collective-bargaining agreement. No evidence of any unfair labor practices relating to the formation or maintenance of that relationship was introduced in this record. The only evidence of animus that can be gleaned from the evidence is that found in the alleged Section 8(a)(1) violations, isolated and denied admissions, or comments by supervisors to the Charging Parties herein,<sup>7</sup> and some evidence of inconsistent application of policies and perhaps disparate imposition of discipline between employees.

There is a further problem with the matter of knowledge by Respondent of the discriminatees' union sympathies and/or activities. There was no overt showing of union activity by the discriminatees at the workplace nor was a list of

bring up the matter in any employee meetings or with any other employee prior to the election.

<sup>7</sup>Mariani testified that he had a meeting with Jack in November wherein Jack showed him the branch's financial records that revealed the branch's financial position had improved because of Jack's efforts. Mariani added that Jack said that he had 29 job applications and that if he had to, he would replace existing employees one by one with new ones, and cut the hours of existing employees. According to Mariani, Jack said he could also cut the wages of existing employees about \$3 an hour, and the meeting ended with Jack telling him that he did not need the Union to represent him. Jack admitted meeting with Mariani and telling him about the branch's finances, but denies making the statements attributed to him by Mariani. At the time of this conversation, Mariani was secretary of the Union, a fact known to Respondent. I do not find it credible that Jack would tell a union official that he did not need union representation, or any of the other statements allegedly made. I credit Jack's denial. Furthermore, as far as this record reflects, there have been no mass firing, no reductions in wages or hours, and the parties have engaged in collective bargaining.

union organizers or sympathizers provided to management.<sup>8</sup> Aside from some factually disputed questioning of the discriminatees and/or disputed comments made to them that would indicate knowledge of union activity, there is no evidence that any effort was made by Respondent to learn the identity of union supporters. This is very consistent with the Respondent's apparent hands-off response to the organizing effort. It might be asserted that the animus lay not with Respondent's management beyond the affected branch facility, but with Douglas Jack, who was personally responsible for the financial turnaround of the facility. Even that approach, however, is dulled by the fact that all of the serious discipline administered during and after the campaign was ultimately approved or decided on by Jack's superiors. These are the same superiors who directed that no antiunion campaign be waged.

In addition, in the case of each of the involved discharges, the alleged discriminatee did, in fact, violate one or more company rules, the violation of which calls for immediate discharge. These rules were shown to have a valid reason for their existence and each of the affected employees was aware of the rule violated and the potential consequences of violating the rule. The fact that the General Counsel adduced evidence that some other employees were dealt with less harshly for similar violations does not support his case because at least some of these employees were staunch union supporters, whose support was known by Respondent at the time discipline was issued. Thus union support was not the basis for the disparate treatment.

After careful consideration of the entire record, where the evidence compels a credibility determination between the testimony of Jack and Riley on the one hand, and one or more of the alleged discriminatees on the other, I have credited the testimony of Jack and Riley. I have done so because they appeared to be generally more credible in their testimony than the alleged discriminatees, and because in most cases, other undisputed evidence supports their testimony and not that of the alleged discriminatees.

In my opinion, the General Counsel's case is extremely weak because of the failure to clearly establish animus and knowledge of the discriminatees' union activity or sympathies. For its part, the Respondent has shown that it had legitimate business reasons wholly unrelated to animus for taking the personnel actions it took. After a full discussion of the facts, I will find that the General Counsel has not made the requisite prima facie case with respect to the 8(a)(3) and (4) discharge allegations and will recommend dismissal of these allegations.

1. The discharge of Dennis Strimike

a. *Was Strimike's union support known to Respondent and did Respondent threaten him because of such support?*

Dennis Strimike was hired by Jack on April 21 in the position of driver guard. He was discharged on July 12 for allegedly being in the driving compartment of a company armored truck while performing the duties of a messenger guard. The armored trucks operated by Respondent have

<sup>8</sup>Indeed, Charging Party Linko did not become aware of an organizing campaign until after the representation petition was filed.

seating in the drivers compartment and a seat in the secured cargo area. In the transportation end of the business, Respondent uses what it terms as messenger guards and driver guards. The terms are somewhat confusing in this record as they are used at least two ways. There are evidently job classifications of messenger and driver guard and persons are hired into one or the other classifications, with the messenger guard receiving higher pay than the driver guard. The terms are also used to describe the role played by a guard. For example, a person paid as a driver guard may actually perform the duties of a messenger guard and while doing so is the messenger guard. The reverse of this situation also occurs. Because of the necessity for a messenger guard to carry a handgun, messenger guards are supposed to have authorization from the State of Connecticut to do so.<sup>9</sup> This authorization is commonly known as a "blue card." To obtain such a card, a person has to apply, take a course of instruction, and demonstrate proficiency with the use of the gun. According to Jack, it takes up to 90 days to get the card once the paperwork associated with the application is filed with the State. Though Strimike applied for the card and took the required training, he had not received a blue card as of the date of his termination.

Upon his hiring, according to Strimike, he filled out a number of documents, including one called a training certification checklist. This lists a number of topics under the heading "training module" and by each is a line for the employee to sign and a corresponding line for the branch manager's signature. Among the topics listed are "vehicle operations, driver-guard duties, messenger guard duties, standards of conduct and employee handbook." All the lines are signed by Strimike and the supervisors' lines are signed by Jack. According to Strimike, he had no training or discussion with Jack about the matters set out at the time he signed the paper. According to Jack, he went over each item with Strimike in a 2- to 3-hour session held April 19. Jack also pointed out to Strimike that he was a probationary employee for 90 days.

According to Strimike, he received no formal training, but learned while performing the job with more experienced guards. He would be taken on a route by a messenger guard, Chuck Woska, who would teach him the route, and how to perform his duties. This training process lasted about a month. Strimike testified that in the first 2 or 3 weeks of his employment Jack explained his duties as a driver guard. Strimike was complaining because he had not received his blue card and Jack informed him that his sole duty was to drive the Company's trucks. As a driver guard, Strimike did not carry a weapon.<sup>10</sup> During his training, the messenger guard would sit in the front of the truck with him, with the permission of someone in the management of the branch. The only means of communication between a driver and a messenger who is sitting in the rear of the truck is a small

porthole in the truck wall separating the driving compartment from the rear of the truck.

Prior to June 1994, he was not warned about committing any infraction of a company rule. He is a member of the Union and signed an authorization card on June 8. At about this date, he was given about 10 to 15 cards by Simms and began giving them to fellow employees. On one occasion, he believes he might have been observed with the cards by Riley. He was able to get all of the cards he was given signed by employees by about June 20 and turned them back over to Simms. In the same time frame, he and fellow guard Sal Urso had returned from a route and were complaining to Riley about the difficulty of the particular route. According to Strimike, Riley became irritated and said, "You Union boys better stick together cause he's cleaning house. Doug's pissed, you know, watch yourselves." This statement ended the conversation. Urso had also signed an authorization card. Urso testified that he voted in the election and is a member of the Union. Urso was asked if he remembered any instance when Riley made any comment like that attributed to him above to either Strimike or himself. He did not.

Riley denies ever seeing Strimike passing out cards or having cards. He denies ever asking Strimike or any other employee about the Union or which employees supported the Union. He denies threatening Strimike or any other employee with loss of employment because of his union activities. He denies entirely the comments Strimike alleges he made. I credit Riley's testimony in each of these regards. I would note his denial of the threat is supported by the testimony of an admitted union member and supporter. Accordingly, I will dismiss the portion of the complaint alleging that Riley threatened employees with loss of employment.

*b. Was the rule for which Strimike was discharged known to Strimike and was its enforcement unlawful?*

William Cianci is a security agent for Respondent, and his job responsibilities are to conduct internal investigations and to ensure that the branch offices are in compliance with company rules and policies. In connection with the latter responsibility he conducts unannounced inspections of branch facilities to see if they are in compliance with a variety of company rules and procedures. If he finds a violation, he attempts to bring it to the attention of the person breaking the rule and he reports his findings to the branch management. He conducted such an inspection of the Bloomfield branch on June 8 and/or 9. He testified that from a compliance standpoint, he found the branch to be worse than average for the Respondent's branch facilities. The results of his inspection are included in a memo he sent to his superiors. It reports a violation with respect to a currency services seal crimper found in the branch manager's office, that 10 employees needed to get their blue cards, that the VCR system was not adequate, and that "[o]n 6/8/94 there were a total of 18 vans and armored trucks on the road and Security Agent Cianci observed the first 7 that arrived at the branch. Everyone that was observed had the Messenger/Guard riding up front without a vest. Each was questioned why and the response were that they always ride up front and the reasons for no vest varied from I did not take one to it is in the truck."

Strimike was one of the persons found by Cianci riding in front and not driving. Cianci spoke with Jack about his find-

<sup>9</sup> I use the word "necessity" perhaps loosely as there were occasions when Respondent dispatched a run and neither the driver guard nor the messenger guard carried a weapon or was properly licensed to do so.

<sup>10</sup> Like many company rules, this one has an exception as the record reflects that some guards who have blue cards carry weapons when acting as a driver guard.

ings and stressed to Jack the seriousness of enforcing the company policy. Though Cianci did not submit a written report to Jack, he related his findings in detail over the phone. With this information, Jack was able to tell from his own records the names of the employees found riding in the front of vehicles, and Strimike was one of those employees. At the time of the incident, it was not known by Jack whether Strimike or the other involved guard was at fault. Because of the findings made by Cianci, Jack called Respondent's corporate personnel director and asked for advice. He was advised to hold a safety meeting and to explain that rules violations would no longer be tolerated. He conducted such a meeting on or about June 21.

Jack explained the reason for the involved rule in his testimony. No matter what the cargo carried in its trucks, it is called the "liability" by Respondent. The liability being transported is primarily the responsibility of the messenger guard, who signs for it from the Company's vault or from a customer and actually handles it physically at delivery. It is the Company's policy that outside the secured branch facility, while engaged in making pickups and deliveries of liability, the driver guard remains in the driver's cab and the messenger guard remains in the secured rear of the armored vehicle. The driver is in a more vulnerable position with respect to physical harm if a robbery attempt is made. The Company does not want a situation to exist when both driver and messenger guards could be killed and the truck then left unprotected. If the messenger guard is locked in the rear of the truck, it is unlikely he would be harmed in a robbery. Hence the Company has a written rule calling for the automatic discharge of "any person serving as a messenger who is caught riding in the front of the armored truck (this does not pertain to armored vans or ATM vans) without specific authority by branch management."<sup>11</sup>

The Company's personnel handbook describes the duties of the armored car crews.

#### 1. Basic duties—Armored Car Crews

As a Messenger/Guard you will direct the work of the truck crew from the beginning to the end of your assigned work day. You will also be responsible for the cargo and will be the only person allowed to enter the rear compartment. (This does not apply when there is a crew of four or more.)<sup>12</sup> In accordance with company regulations and procedures, you will also take action or give instructions to the crew when necessary in the interest of their safety and valuables in their custody.

As the Messenger/Guard, you must always wait for the Driver/Guard's signal that all is clear before leaving the vehicle. You should then draw your weapon (where prohibited, you will unstrap your holster and place your hand on the weapon) and make a quick inspection of the entry and inside of the premises. If all is clear, you will return your weapon to the holster and perform the required services. You will also perform a similar inspection before returning to the vehicle's rear compart-

ment and follow proper procedures to re-enter the vehicle.

As a Driver/Guard, you will drive the armored car with care and use only safe and acceptable driving practices. You will cooperate with the Messenger as required in accordance with instructions and company regulations and procedures.

As the Driver/Guard, you will make a quick inspection of the surrounding area at each stop before giving the Messenger/Guard the all clear signal. You will always remain in the front of the vehicle, constantly inspecting the area between the truck and the customer's premises.

General Counsel's Exhibit 6 is a sheet containing a number of employees' signatures that purports to be an indication that they attended a safety meeting conducted by Respondent in June. According to Strimike, he did not attend this meeting and his signature is on the list because he had to sign it before he could get his paycheck. He also asserts that no one from management reviewed with him what was discussed at the safety meeting. Jack testified that Strimike was in attendance at the meeting as indicated by the signature sheet. Employee Chuck Woska testified that he did attend this meeting and, inter alia, Jack informed the employees that William Cianci had conducted a security inspection and had found a number of violations. These involved guards not wearing protective vests and both guards riding in the front of armored trucks.

Howard Simms also attended the meeting with about 12 other employees. According to Simms, Jack spoke about keeping the trucks clean, the need to wear protective vests, and that anyone caught using their personal weapon instead of the company weapon would be terminated. Jack also said that drivers should be in the front of the trucks and that messengers should be in the rear. He warned that he would terminate employees if he found two riding in the front without his prior permission. This comported with Simms' understanding of the company rule. Simms also testified that prior to this time, the rule had not been enforced. After this meeting, the Company began enforcing the rule.

I credit Jack's testimony that Strimike was in attendance at the meeting. Both Simms and Woska's signatures appear on General Counsel's Exhibit 6 after Strimike's, which would not be the case if he signed the sheet at some point subsequent to the meeting. Neither Simms, Woska, nor George Linko, whose names are on the sheet, denied being at the meeting nor did they testify that Strimike was not at the meeting.

Strimike related his understanding of the rule that allegedly caused his discharge. In the normal course of business, the driver guard is to drive and the messenger guard is to sit in the rear of the truck. According to Strimike this rule was not enforced until the union organizing drive started. As noted earlier, there are exceptions to the rule. With management permission, the messenger guard can sit with the driver for training purposes. As a factual matter, I find that Strimike was aware of the rule concerning where driver guards and messenger guards were to sit and with the consequences of not obeying the rule. I can find no evidence that the union organizing campaign played any role in Respondent's enforcement of this rule or any other rule. Jack credibly testi-

<sup>11</sup> The Company operates some armored vans to transport coins primarily. These vans do not have a rear compartment with a seat, so the messenger of necessity has to ride in the front with the driver.

<sup>12</sup> The only crew involved in this case is a two-man crew, one driver and one messenger.

fied that he was assigned to the Bloomfield facility to bring it under control, to include having employees abide by company rules and procedures. The testimony of the employee witnesses bolsters Jack's assertions that this branch was, in fact, out of control and out of compliance with such rules and procedures. He not only began enforcing the rule regarding where guards should sit in the trucks, but almost all other rules set forth in the employee handbook. Enforcement of these rules appears to be uniform, though the level of discipline imposed varies, but not because of a union support. The timing of the enforcement of the rules appears to me, and I find, related to the unannounced inspection by Cianci and not the onset of the unopposed union organizing campaign. I will recommend that the portion of the complaint alleging that enforcement of the involved rule violated Section 8(a)(3) and (1) be dismissed.

*c. Was Strimike discriminatorily discharged for violating the rule?*

In mid-June, Strimike was returning to the Bloomfield facility from a run with messenger guard Thurman Allen. Allen was driving and Strimike was in the passenger seat of company vehicle 603. Jack observed them and went to the vehicle and asked why Strimike was not in the rear. Allen pointed out to him that the particular vehicle did not have a rear seat.<sup>13</sup> According to Strimike, Jack ignored this advice and told Strimike, "Dennis, you've been warned." Strimike was not driving this day, though he was the assigned driver, because the involved truck was one of two operated by Respondent that required the driver have a commercial driver's license, which Strimike does not possess. Jack testified about this incident, placing its date as July 1. He testified that he asked Allen and Strimike why one of them was not in the rear. Allen pointed out that it was a coin truck and there was no rear seat. Jack then said, "Okay, I understand." He added, "If there's a third seat in the back, then I want the person not driving to be in the back. We've already talked about it and already gone over it."

Allen testified that the conversation ended with Jack saying, "You realize that if you were in a regular truck, that there would be no two men in the front; one man would be in the back?"

On July 2, Strimike was assigned to be driver guard running route one with messenger guard Chuck Woska. They were to pick up liability at a number of stores in the southeastern part of Connecticut. As they left the Bloomfield facility, Woska told Strimike that they were already late starting the run, which was long, and for that reason he, Woska, was going to drive. Woska took the driver's seat and Strimike stayed in the front in the passenger seat. They left the facility and after only a mile were pulled over by Jack. Strimike got out of the truck and went to Jack's vehicle. He described Jack as furious as Jack asked, "What are you sitting up front for?" Strimike replied that he was not carrying a gun and he did not know the route being run. He explained that Woska had instructed him to sit in the front because of Strimike's unfamiliarity with the route and because they were late.

<sup>13</sup> As is shown above, the Company's formal written rules make an exception for this type vehicle.

According to Jack, Strimike denied any knowledge of the rule about the nondriving guard having to ride in the back of the truck. Jack retorted, "You've been breaking policy since you've been here." Strimike asked what policy he had broken, and Jack said, "I'm not going to get into it with you right now. I'll talk to you about it later." Jack then instructed Strimike to return to the truck and send over Woska. According to Strimike, he was able to hear parts of their conversation, including Woska telling Jack he had instructed Strimike to sit in front, and Jack responding, "You what!" At about this point, according to Strimike, Woska got into the rear of the truck and they left and ran the route.

Woska testified about this incident. At the time of the incident he was an armed messenger guard, and had worked for Respondent since August 1993. At the time of hearing he was on leave of absence with Respondent and was working for the State of Connecticut Department of Corrections. At the time of the incident in question, he was in support of the Union and had signed an authorization card. He testified that on completion of his work on the night of July 1, he looked to see his assignment for July 2, and found that he was running route one with Strimike. According to Woska, he went to Riley who was still at the facility and asked him for permission to have Strimike sit up front because the route was new to Strimike. Riley responded, "I don't have a problem with it. I should be here in the morning and I'll sign you off on it." Riley denies this.<sup>14</sup> He testified that if Woska had asked him, which he also denies, he would have given permission, if at all, in writing at the time. When Woska reported to work on July 2 between 7:30 and 8 a.m., he learned from a vault supervisor that the route had been changed to add some additional stores. At about 8:15 a.m., Jack approached him and advised him to be sure he had the keys to all the stores on the route. Woska began gathering the keys and found that one was missing. The vault supervisor told him that it had been lost. Woska told this to Jack, who told him to keep looking. He spent another 20 minutes or so unsuccessfully trying to find the key and then decided to leave the terminal because the route was long and they were late in departing. According to Woska, when he was speaking to Jack, Jack told him to make sure that Strimike does his job today because he had been having problems with procedures.

Strimike and Woska left the facility at about 9:45 a.m. and proceeded to a nearby gas station and fueled the truck. When this was done, Woska told Strimike, who was driving, that he was going to drive to another gas station to get coffee. According to Woska, Strimike looked nervous and told Woska, "Look, man, I haven't been doing—I've kind of screwed up here and there. I don't want to be breaking company policy." Woska told him that he was the messenger and was in charge of the route and would take sole responsibility. Strimike relented and Woska got in the driver's seat

<sup>14</sup> I credit Riley's denial. There is another incident in this record when another union supporter was found riding in front in violation of the rule, and when caught by Jack, told him that Riley had given him express permission to do so, but had forgotten to write such permission. Riley agreed that he had given such permission and no disciplinary action was taken. There is no credible reason in this record why Riley would lie about giving such permission with respect to Strimike when he did not hesitate to admit giving permission to another clearly known union supporter and officer.

and Strimike slid over to the passenger's seat. After they were stopped by Jack, and Strimike had talked with him, Woska had a conversation with Jack. Woska told Jack that he was ultimately responsible and Strimike was only following his instructions. Jack was unhappy with Woska's instructions. They talked some more and Jack ended the conversation saying they would talk later. Later on the run, Woska called back to the facility because of a problem dealing with some of the stores they had been told to service. He and Jack got into a heated argument at that time and Jack told Woska he was fired. Woska hung up and after a few minutes' reflection called back and this time Jack said they would talk about it later. He was ultimately not reprimanded for the argument or the sitting-up-front incident. On the night of July 2, Woska called Riley and told him what happened. Riley said, "Well, it will be taken care of through the proper channels." Note that though he spoke to Jack in the morning of July 2, he did not mention to Jack Riley's verbal okay for Strimike and him to ride in front nor did he independently ask Jack's permission.

Between July 2 and 12, Strimike was not disciplined about the incident, though he testified he was told that Jack wanted to talk with him. On July 12, however, he was called into Jack's office and discharged. According to Strimike, Jack said he had been warned about sitting in the front several times. Strimike replied that the only time he was warned was when he was in truck 603, which has no rear seat. Jack replied that Strimike had been breaking company policy since he was hired, noting that the Respondent's chief of security had pictures of him riding in front. After a little further by-play, Strimike left.

Cianci and Marinelli were consulted about this incident and Marinelli made the decision to terminate Strimike. Cianci testified that the matter of the Union was not part of any conversation regarding Strimike.

Later on July 12, Woska went to see Jack about Strimike's discharge. He asked whether the discharge related to the events of July 2 and Jack said, "No, Mr. Strimike has been having some problems keeping within the guidelines of the company's policies and procedures on how a driver guard is supposed to operate within the company and it really has no concern to do with you." This statement comports with Strimike's statements to Woska and with his fear of complications arising if he switched roles with Woska.

Woska testified repeatedly that he should have been disciplined and not Strimike. There is some support for that view in the testimony of Cianci. He testified that the rule had to do with double exposure of the messenger and driver at the same time, when the truck could be compromised. I asked Cianci if it satisfied company policy for the armed messenger guard to drive and the assigned unarmed guard to ride in the back of the armored vehicle in the place of the assigned messenger guard. He answered, "Not really. What normally would happen after your assignment is given out in the morning would be that management would assign the unarmed employee to drive." For the two involved guards to switch roles would require management's written approval. He said it would be a clear violation in the same scenario if the armed messenger drove and the unarmed driver sat in the front in the passenger seat. In such a situation, he stated the person in violation would be the assigned messenger guard. In other words, in the Strimike-Woska incident,

Cianci testified that Woska would be the one in violation because he was the one whose assigned duty is to sit in back with the cargo, unless written approval of a change is obtained from management.

I believe it is clear from Cianci's testimony that either the wrong person received discipline or that both Strimike and Woska should have been disciplined. I believe it is also clear that Jack's understanding of the rule was the not same as Cianci's, however. Thus, the question still exists, did Jack fire Strimike for his union activities or out of a good-faith, though incorrect, understanding of company rules? I believe the latter is true.

In response to a question designed to elicit Jack's view on the propriety of a driver guard who has switched roles with the messenger for driving purposes riding in the front or rear, Jack answered:

As area manager, I can increase the security aspects of what we do, but not lessen. I cannot lessen the area of security with regard to personnel crew members and what might take place with regard to a lack of intensity on safety on their own. So the idea was, in that meeting,<sup>15</sup> to let them know that if you're a messenger and you have switched driving, then that person that is not driving does not sit in the front of the truck. He is in the back. No two people in the truck unless I give permission for you to be in the front of the truck.

Simms' testimony about this meeting comports with Jack's in this regard. Regardless of whether Jack's interpretation of the rule is correct, or whether under a correct interpretation Woska, not Strimike, should have been disciplined, I find that the Act was not violated by Strimike's discharge. I cannot find that discriminatory motivation played any role in the discharge. I cannot find that Respondent harbored animus toward the Union or that it was proven that Respondent had knowledge of Strimike's union activities or support.

I will recommend that the complaint allegation alleging Strimike's discharge to be in violation of the Act be dismissed.

## 2. The discharge of Howard Simms

### a. *Did Respondent know of Simms' union activities?*

Howard Simms was hired by Respondent as a driver guard in September 1992. Simms is a seasoned guard, having spent many years working in this capacity for a number of companies providing armored car services. Simms, as noted, was the originator of the union organizing campaign. He is currently president of the Union, having been elected to that post subsequent to his discharge and the election.<sup>16</sup> During the drive, there were two union organizing meetings held. Simms attended one of these that took place Sunday, June 19, at an area restaurant between 2 and 5 p.m. There were

<sup>15</sup> Jack was referring to the June safety meeting in which he announced that the rule would be enforced.

<sup>16</sup> The date of the election at which union officers were selected has been put in August, September, and October by various witnesses. Simms believed he was elected in August, Richard Russell testified he was elected in September, and Ralph Mariani testified he was elected in October. I have no way of verifying which date is correct.

5 employees who attended the meeting, out of a total of about 50 employees who would fall within the unit description. According to Simms, on the day following the meeting, Simms reported for work about 6 a.m. and in the vault area, Riley said to him in a joking manner, "What happened? I hear only five guys showed up for the meeting." Simms said, "How do you know that?" Riley replied, "I know a lot of things." Later that day, after Simms had completed his run, he spoke with Vault Supervisor Ernest Small. Small asked Simms, "How y'all gonna start a union and only five people show up for the meeting?" Simms did not respond. Simms testified that he had a friendship relationship with Small.

Riley testified that the first time he heard about a union campaign at the branch was when he heard employee Brian St. Germaine, an employee in the vault began yelling "Union, Union." Riley told him to stop yelling and keep it to himself. The employee retorted, "Well, you can come Sunday and hear it all day long." Riley denies ever asking Simms if he was supporting the Union. He denies totally Simms' allegations about asking him about the union organizing meeting. I cannot find that the identities of the other persons attending this meeting are set out in the record. Although Riley is supposed to have spoken to Simms from a distance of about 25 feet, no one else heard this remark about the union meeting or certainly no one else came forward to corroborate Simms' testimony. Simms testified that he had not previously spoken to Riley about the Union or his support of it nor had he made such information available to Jack or Small. There is no credible indication in the record that Riley ever said anything else about the Union to any other employee prior to the election. There is no indication how Riley would have obtained the identities of the persons attending the meeting. He testified that he spent that Sunday at home with his family, and no one placed him or any other member of management at the restaurant. In the absence of any corroboration of the alleged conversation between Simms and Riley, I accept Riley's denial that it occurred.

On the other hand, the complaint alleges that Small also gave the impression of surveillance by his conversation with Simms on the same subject. Small was still employed by Respondent at the date of hearing, though at a facility in Georgia. No reason was offered, or excuse made, for not bringing him to the hearing. In these circumstances, as there is no denial that the conversation took place, I will credit Simms' testimony in this regard. Accordingly, as the statements of Small, an admitted supervisor, clearly give the impression that the union activities of Simms and other employees were under surveillance, I find that Respondent violated Section 8(a)(1) of the Act. Though Respondent did not conduct an antiunion campaign and apparently did not oppose it in any way, this management response could not have been anticipated on June 20 and thus the implication of surveillance would have been coercive. Because this conversation was not explained and because Small did not testify, I assume that Small had knowledge of Simms' union sympathies. Yet, I credit Jack and Riley's assertions that they did not have such knowledge. If such knowledge is imputed to them, I cannot find that they took any adverse action toward Simms because of such knowledge.

*b. Was Simms discharged for legitimate reasons or for discriminatory reasons*

Prior to June 30, Simms had not been disciplined in any way by Respondent. He was suspended on June 30 and fired on July 29 for sleeping while on duty and for careless, negligent, or unreasonable handling of firearms. These are automatic dischargeable offenses under Respondent's written rules.

On June 30, Simms was messenger guard on a run that first went to the Federal Reserve Bank in Boston, Massachusetts, then to another Boston bank, then to Respondent's coin rolling facility in Norwood, Massachusetts, and then back to Bloomfield. When Simms and his partner for the day, Thurman Allen, arrived at Norwood, they had on board an unspecified amount of coin, and \$7 million in cash in trunks. Although Simms referred to the Norwood facility as secured, it is not a secured facility like the one at Bloomfield. At Norwood, the truck is backed to a bay with a door, much like any loading and unloading dock. The door is raised for loading and unloading, but the truck is still outside the facility. At Bloomfield the trucks go completely into the secured vault area. Persons other than Wells Fargo employees must enter the facility through a front door, go through a metal detector, and be escorted by a Wells Fargo employee. There is also an unmanned shotgun in the area where coins are stored. This area is about 15 feet from the bay where the truck is stationed for loading and unloading.

At Norwood, Simms and Allen dropped off about four skids of bagged coin to be rolled at the facility. These were placed in an area about 10 to 15 feet from the truck. The floor supervisor, Robin Mansir, undertook a count of the bags of coin and the count did not comport with the amount the documentation indicated should be there. This required that the bags be recounted that is evidently not a simple matter. The second count was also off, so a third count commenced. Simms testified that he was very hot and so he took his gun off and hung it on a ramp near the back of the truck. He testified that he then returned to help with the count. According to Simms, Mansir asked him, "Shouldn't you have your gun on?" Simms replied, "Well, this is a secured area, it's hot." Mansir directed him to put the gun back on so he got his gun and sat down in a chair near the truck and put his gun near to him, about 3 feet away. He testified that he sat down because he had been hospitalized the previous month for a heat-related illness. He felt he was having the same problem again. So he sat near the truck where he could feel a breeze.

Simms denies that he fell asleep or that his eyes were ever closed. He testified that he was wearing photo-gray glasses that darken with increasing light. According to him, about 5 to 10 minutes after he sat down, Supervisor Maria Aurilio came to him, approaching him from the rear. She asked what he had on board and he told her \$7 million. According to Simms, nothing else was said and she left. A few minutes later, Mansir called him to the phone, and he found that Jack was on the line. Jack informed him that he wanted to see him when he got back to Bloomfield. Jack testified that in this phone conversation, he asked Simms why he was sleeping and why his gunbelt was off. According to Jack, Simms did not deny these charges.

When Simms arrived at Bloomfield, he met with Jack and Riley. Jack informed him that a supervisor at Norwood had



reported that Simms was asleep on the job and had his weapon off. Simms testified that he admitted having his weapon off but denied being asleep. Jack said his conduct was grounds for termination, and that Simms was being suspended. Simms asked how long the suspension would be and Jack said he could suspend him for 30 days pending an investigation. Jack suspended him. The suspension was for 3 days and describes the reason as follows: "Employee was at Wells Fargo Terminal in Norwood. Was found asleep in a chair with weapon not on his body. Weapon was to the side of employee, but not on his person. This incident was found by a WFAS employee who was a supervisor in Norwood facility."

On July 5, Riley called Simms and asked him to work on July 6. Simms asked not to work that day as he was beginning his vacation on July 7 and was leaving the night of July 6. Riley said that was okay. Simms took his vacation, which was unpaid, and returned to work on July 26. Before he left for his run he spoke with Riley. Riley told him that he did not think the suspension was over because the matter had been turned over to higher management and they had not yet responded. Curiously, Simms then testified that no one in management told him the matter was still under investigation. I would consider Riley's statement to him to indicate just that. In any event, Simms worked the next few days without further incident. On July 29, he reported for work and after waiting for a run for about an hour, Jack arrived, and told Simms he was being terminated.

Simms asked why, and Jack told him that he had a letter from a supervisor at Norwood that said that two witnesses observed Simms asleep with his weapon off. Simms asked to see the letter and Jack obliged. The letter reads:

July 1, 1994

To Whom It May Concern

On 6/30/94 the Bloomfield truck arrived at the Norwood Branch with a shipment of internal coin believed to be short one piece. We are under the assumption that the drivers and messengers are signing for "sealed" trucks upon departure from Bloomfield. Because of other past issues with Bloomfield, we have asked the drivers and messengers to break down rails of coin in order to isolate any discrepancies in the piece count, in agreement with Mr. Doug Jack's and Mr. Dan Riley's instruction to their employees. With a busy shipping and receiving area, this needs to be done quickly and efficiently to insure the trucks meet their schedules after their Norwood stop.

On 6/30/94, the Bloomfield truck had off-loaded their shipment, and after two hours I was called to the receiving area and informed of the discrepancy in the piece count. There I found the driver, along with our Operations Supervisor, Robin Mansir, breaking down the shipment and Howard Simms asleep in a chair on our loading area. The Easton Fleet Feeder was also outside waiting to off-load and was held up due to the Bloomfield truck. Along with the Bloomfield driver (Allen) and Robin Mansir, the messenger guard from the Fleet Feeder, Bill Roundtree, had also pitched in to help isolate the coin discrepancy.

I approached Mr. Simms And asked what the liability remaining on the Bloomfield truck was and he replied, "Nothing." I asked if the two hampers in the back of the truck were empty. Mr. Simms then replied no, the truck was holding \$7,000,000 in currency. I then proceeded to phone Mr. Jack and report to him the count discrepancy. In the middle of the conversation the piece was found. At that time Robin Mansir then informed us Mr. Simms had removed his weapon and belt. We had an outside vendor working in the area and Robin told Mr. Simms that he shouldn't have removed his gunbelt and hung it in an area accessible to anyone, especially with an outsider in the building and with a large amount of liability being off-loaded.

Not until the Bloomfield truck was off-loaded did Mr. Simms retrieve his weapon. We have never had any past grievances with Mr. Simms, and he has always conducted himself in a professional manner in Norwood and we regret these past events. Signed, Maria Aurilio.

Aurilio testified and in addition to what is set out in her letter, she stated that the search for the missing coin bag took over 2 hours. She testified that when she came into the area where the search was taking place, she observed Simms sitting in a chair with his head back and his eyes closed. She believed him to be asleep. She walked over to Simms to have him move the Bloomfield truck so another truck that had been waiting for some time could off-load. She wanted to know what liability was still on the truck as it would have a bearing on whether the truck could be moved to a less secure place. She testified that she called Simms by his first name, and he opened his eyes. According to her, the following colloquy took place.

She asked, "What is the liability on your vehicle." At first Simms said, "Nothing." She observed hampers in the truck and asked Simms to explain them. She asked is there any liability on that vehicle and Simms again said no. She asked if the hampers were empty and he said no. She said then they are empty. At this point Simms told her about the millions on board.

She called Jack to inform him about the missing bag of coin. There had been an ongoing problem with missing coin and it was a matter of concern with the Bloomfield branch. She was also unhappy about the time it was taking to offload the Bloomfield truck. During her phone conversation with Jack, Mansir joined in and told Jack that Simms had removed his gun. Aurilio then told him she had found him asleep while others were looking for the missing bag. The letter set out above was written at Jack's request.

The termination meeting with Jack lasted only 5 minutes and Simms left. He testified that Riley walked out with him to his car. While they were walking, Simms testified that he said, "Man, this got to have something to do with the union." According to Simms, Riley replied, "Sure it is." Riley denies this conversation took place and denies going with Simms to his car. He testified that he remained in Jack's office when Simms left. He also noted that he had nothing to do with the decision to terminate Simms and would have had no knowledge of any reason other than the one given Simms in the meeting. I credit Riley's denial. Again, management did not conjure up a reason for firing Simms, nor is there any showing that between the date man-

agement allegedly learned of Simms' union sympathies and the date of the incident for which he was fired that he was under scrutiny or surveillance of any kind. No more onerous tasks were given to him after that date nor was he discriminated against in any way, however small, that would give rise to a belief that management was out to get him. Certainly there was no showing that Aurilio or Mansir had any knowledge about Simms' union activity. I totally credit the testimony of Aurilio and thus find, as I believe, that Simms was asleep on duty with his gun off. By Simms' own admission, he was told by a supervisor, Mansir, to put his gun back on and he refused to do so.

The General Counsel introduced evidence relating to somewhat similar instances involving other employees that resulted in less harsh discipline. I do not believe these incidences come close to establishing discriminatory treatment of Simms. The evidence of alleged disparate treatment follows.

Jack testified that in September, he was advised by Thurman Allen that his pistol had fallen out of his holster while he was sitting near a water cooler at the Federal Reserve Bank in Boston. He had not notice and had left. Jack called the Fed and it was closed. Jack called back the next morning and learned the weapon had been found. Allen retrieved it that day. It was discovered that Allen's holster had a defective strap, and he was given a new one. Allen was taken off the route, given less hours' work, and a verbal warning over the incident. The incident was reported to upper management. Jack said this was not as serious as the Simms' incident because Allen was not sleeping on duty. The incident was also not as serious as Allen clearly was unaware his gun had fallen from his holster. Simms consciously removed his gun and refused a directive from a supervisor to replace it.

There was another handgun incident in September, this one involving vault worker Richard Sherwood. Sherwood left work at midnight and was armed. He took off his gunbelt and placed it on the top of his truck while he changed shoes. He then drove away, forgetting his gun was on the truck. It was lost and remains lost. Sherwood noticed the loss when he got home and immediately reported it to the branch and the police. Branch personnel and the police, together with Sherwood, searched the route he had driven but could not find the gun. Sherwood was removed from his job in the vault and given a lesser paying job with no overtime. He was verbally reprimanded and the incident reported to higher management. Again, Sherwood did not remove his gun consciously while on duty, and did not refuse a supervisor's directive, as did Simms.

Respondent suspended guard John Vivian in June for carrying his personal handgun instead of the company weapon. Vivian then made some threats against Jack and was fired.

There was another incident in which Allen was accused by a coworker of sleeping on the job and violating certain other rules. Allen was not disciplined for this as the two drivers did not get along and Jack thought the whole complaint was the result of a personality difference. There were no other witnesses to this event.

In none of these incidents was the conduct of the employees involved as serious as that of Simms or was the conduct willful as was Simms or was the conduct observed by a supervisor having nothing to do with the Bloomfield facility.

Additionally, Jack testified that the decision to terminate Simms was made by Marinelli after an investigation that involved Cianci and the Company's personnel director. Jack also interviewed Allen about the incident and was told that Allen's back had been to Simms and he did not know whether he was asleep or not. In the total absence of a credible showing that Respondent harbored union animus, and given the fact that the offense Simms was fired for was both serious and real, I do not find that Simms was fired for discriminatory reasons. I will dismiss the complaint allegation alleging his discharge as a violation of the Act.

### 3. Discharge of George Linko

The complaint alleges that George Linko was discharged at the end of August. I disagree and will find that he voluntarily quit his employment at that time and that there was no constructive discharge involved. There are a number of credibility determinations to be made with respect to the testimony of Linko versus Jack and other employees. In every such instance, I do not credit Linko and do credit the testimony of the other employees. As will be shown below, if one believed Linko, Jack was conducting a personal and vigorous antiunion campaign, all of which was directed solely at George Linko. Linko's claims about Jack's statements are totally at odds with the undeniable evidence that neither Jack nor any other person connected with management took any stance whatsoever with respect to the union campaign nor did they take any adverse action against Linko.

Linko was hired on April 22 as a driver, but was shortly transferred to vault duties. He also was utilized to computerize route logs. His vault duties consisted of dispatching, customer service, administrative functions, and checking in the messengers and drivers. He was paid \$8.50 an hour. Until the end of July, he worked generally 6 days a week, Monday through Saturday, about 65 hours a week. In August, this was reduced to 40-50 hours a week, Monday through Friday.

Linko testified he was a member of the Union, but did not sign an authorization card. He became aware of the campaign when he saw an authorization card on Riley's desk in July. He also testified that he overheard a conversation between Jack and Riley concerning the campaign and the authorization card. All he could recall of this conversation is Riley saying, "[T]his is a union card and they are continuing to do a union campaign." Riley denied this and denied ever finding an authorization card on his desk. For the reasons set forth above, I credit Riley. I cannot find that Jack was ever asked about this conversation. In any event, a conversation in July about the union campaign and an authorization card between Jack and Riley would not demonstrate anything. The representation case petition was filed in early July, and the Company was certainly on notice that the Union was seeking to represent its employees. If anything this testimony indicates that there was not much actual organizing going on, if the first Linko heard of it was at about the date the representation case petition was filed or after that date.

On August 9, Linko and Jack had a conversation in which Jack told Linko he was assigning him a new duty, to start a vehicle inspection report program. This was a paperwork program to verify that vehicle safety requirements were met. There is no contention that this change in duties was more onerous or less appealing than Linko's previous duties. Based on Linko's extensive educational qualifications, I

would agree that he would be a likely employee to undertake this task. Linko began work on this project in the vault area and at some point, at his request, moved into the garage area to perform his work. According to Linko, also on August 9, Jack told him there was going to be a union election on August 18, and that Wells Fargo employees should not vote for the Union because he could not afford the Union. According to Linko, Jack also said, "[i]f any of the employees were to vote for the Union, that these employees would make things worse for themselves and that the branch would be destroyed." By this Linko understood Jack to be saying the branch had to be independently profitable and as it was losing money already, the Union might make it worse. Jack then asked him what his position was with the Union and whether or not Linko was going to support him with the changes that he was making. According to Linko, he told Jack, "I would perform my duties, all my duties, to the best of my ability."

Although Jack testified that he assigned Linko to prepare the report at about this time, he denies having the conversation described by Linko. Jack denies ever having a conversation with Linko in which he stated that a vote for the Union would destroy the branch, or that having the Union would make things worse for the employees and denies ever asking Linko his opinion about the Union or where he stood on the issue. I credit Jack's denial. Jack was not shown to be deterring employees from voting in the election in any manner. Again I would note that the only testimony of any antiunion statements by Jack or Riley comes solely from the Charging Parties in what I consider to be highly unlikely circumstances.

On August 17, Jack told Linko that he wanted him to be the company observer at the election, telling Linko that he had no one else to do it. According to Linko, Jack then added that he would be very angry if the Union were voted in and Wells Fargo could not afford the Union and mentioned the branch's financial problems. He again asked Linko his stand on the Union and Linko said he was undecided. Jack denied these allegations and testified that he told Linko that he did not care whether he voted or not or how he voted. He denies telling Linko he was angry or upset about the Union. I credit Jack's testimony. Jack gave him a list of employees, drawing a line across it and told Linko that those names above the line were eligible voters and those below were not. On August 18 Linko served as company observer and voted in the election, for the Union. All of the votes were cast for the Union. The election was conducted between 6 and 8 a.m.

According to Linko, about an hour after the election, he spoke with Dennis Molen in Riley's office.<sup>17</sup> Molen related the contents of a phone conversation he had had with Jack. Linko testified that Molen told him that Jack had asked if Linko voted in the election and Molen told him that he had. Molen said that Jack then said that Linko was a traitor and

that he could not trust Linko to support him.<sup>18</sup> According to Linko, Riley was also present and said, "Yes. Doug is very upset with you." Linko said he remained calm throughout this conversation and continued to perform his duties. Later that day, Linko testified that Riley laughingly called him a union organizer, shop steward, Jimmy Hoffa. Linko replied, "Please don't do that because it's not true." Riley said, "Okay."

Riley gave a different version of the events of this day. He testified that he was in his office and Molen was out in the vault at the dispatchers table. He heard Linko yelling and heard him say, "Who is he to fucking call me a traitor?" He observed Linko walking around waving his hands in the air, and then leave the vault area. That is all he knows of the matter of the "traitor." He totally denies hearing Molen say anything to Linko about Jack calling him a traitor or that Jack could not trust Linko. He denies ever telling Linko that Jack was upset with him. He denies calling Linko shop steward or Jimmy Hoffa on the date in question. He admits calling Linko "Jimmy" on later dates in a joking manner. I credit Riley's version of these events as I believed him and not Linko for reasons set forth earlier and below.

It is unclear why Jack, assuming he cared, would ask Molen whether Linko voted or how Molen would know as he was not at the election. Linko could not recall whether he had told Molen he had voted before this alleged conversation between Molen and Jack. Jack denies asking Molen if Linko voted. Jack testified that he had a conversation with Molen and Riley over the phone wherein he told them to be careful what they said after the election and not to talk to people about it. Jack denies ever calling Linko a traitor or stating that Linko did not have his support. Jack certainly did nothing in the approximate 2 weeks between the election and the date Linko quit that would indicate that Linko had fallen out of favor. Again, I credit Jack's testimony.

On August 18, the date of the election, driver guard John Wells testified that he overheard Jack make a comment about Linko, who was the company observer. The comment was overheard in the evening after the election was over. He was walking around the office building and heard Jack say that "he couldn't believe George Linko voted for the Union, and that he was a union traitor." Wells testified that the windows to the office building are crank out type windows and were open that evening. Jack described the office layout in detail. His personal office has no windows, and the only windows that open are in the billing area. These are two sliding windows high up on one wall. Jack testified that the office is air conditioned and that these windows were not open in Au-

<sup>17</sup> The General Counsel contends that Molen was a statutory supervisor while Respondent contends that all material times, he was a hourly employee in training to become a supervisor. The General Counsel believes that this matter is important as statements attributed to Molen, if believed, would constitute admissions. As I do not believe the statements attributed to Molen were made, I do not find it necessary to determine whether Molen was a supervisor or not.

<sup>18</sup> Linko also contends that Molen watched the vote count after the election by television monitor. There is a fixed video camera in the drivers' room mounted high on one wall and aimed at a telephone used by drivers to gain admittance to the vault. The camera is used for security reasons. Linko testified that Jack was present in the drivers' room for the vote count and stood behind him to his left. According to Linko's testimony, Molen told him that Jack's facial expressions during the vote count indicated that he was very angry. Linko was in the room with Jack, and did not notice that he was angry. I give no weight to this testimony. There was other testimony by Wells to the effect that Jack watched all or part of the voting process on a TV monitor. I credit Jack's testimony that he arrived at the facility after the vote was taken and thus discredit the testimony of Wells.

gust. He denies making the statement attributed to him by Wells. I credit Jack's denial. The physical layout of the office would make overhearing such a remark extremely unlikely and no other details of the alleged conversation were given. Linko testified that the accusation of him being a traitor had been made earlier in the day and one would wonder just who Jack would have been talking to.

On August 29, Linko spoke with Jack outside the office. According to Linko, Jack asked him if he did not receive a salary, was he going to walk?<sup>19</sup> Linko said that he was trying to better himself, that he was looking for a salary and benefits either with Wells Fargo or another company, and that if Jack were in his position he would do the same thing. He asked Jack if he could blame him for looking for something better given his educational background.<sup>20</sup> According to Linko, Jack became angry and said, "Well, George, I can't trust you to support me." According to Linko, this conversation had its origin in a conversation that Linko had with Jack's secretary about 4 days before. The two were talking in general about salaries and benefits and Linko mentioned he was looking for both, either with Respondent or another company. At the time, Linko was receiving an hourly wage with no benefits. He testified that he did not mention leaving the Company. Although one would assume that is what he meant if he were looking outside Wells Fargo for a salaried position. Linko agreed that he was not at that time under consideration for any salaried position with Wells Fargo. Jack testified that his secretary told him about this conversation and she said that Linko had indicated he wanted Jack's job.

On August 30, Linko spoke to Jack in Riley's office. Jack told Linko to start doing his reporting duties in the vault area rather than in the garage. Jack said it would be a better place to perform this task as he would have better control in the vault. The forms that are the basis of the report prepared by Linko are filed daily by the drivers and if he was in the vault, Linko could collect them as the drivers returned from their routes. Linko disagreed saying that he would be called on to perform vault duties and it would interfere with his preparation of the reports. Jack said no, he wanted Linko to move to the vault. That evening he was preparing his report in the vault as directed by Jack and he volunteered to help check in messengers and drivers. Jack said that was okay. Jack testified that he made this move because Linko was having difficulty collecting the individual inspection sheets from the drivers. Linko had failed to collect a number of them in the previous week. He also asserted that move was prompted in part because Linko was interfering with the work of the company mechanic in the garage.

On August 31, Linko again spoke with Jack, this time outside Jack's office, about 12 feet from the door. Linko initiated this conversation and according to Linko, told Jack he wanted to speak about his duties and he wanted Jack to keep an open mind. He then told Jack he did not believe he could effectively perform his duties in the vault environment. He explained he had problems the night before, and believed

working in the garage would be better. Jack said, no, go to the vault, because he thought it was a better place for Linko to work. Linko replied, "Well, Mr. Jack, you know, like I said, if I do go into the vault and work there, again, I'm going to be involved in vault duties, and this will decrease my effectiveness of the VIRs [the reports on which he was working], collecting them and screening them and making sure they are accurate. And I'm trying to offer you—where I was more effective, and you know I was more effective in the garage area." Jack said, "No, George. You will go into the vault, and that's where you're going to work." In response to Linko's concerns Jack volunteered to set up a table in the vault and partition off an area so Linko would not be bothered by the vault work.<sup>21</sup> On cross-examination, Linko admitted telling Jack that under the circumstances he did not believe he could be effective for this procedure and for Jack to find someone else to do the report. Linko then said, "Mr. Jack, what are my options?" Jack said, "I have no work for you. Turn in your badge." Linko complied and gave Jack his badge. Linko asked for an unemployment slip and Jack declined, telling Linko he had quit. Linko then denied he had quit and accused Jack of firing him.

Jack had a different version of this conversation. He testified that he had decided, together with the Respondent's fleet manager, to put Linko back into the vault with a partitioned area so that he could do his reporting work better. On August 31, after again telling Linko that this was going to happen, and explaining why, Linko said he did not want to make the move. Linko asked Jack, "What are my options?" Jack said, "There are no options, you are going back there in the vault." Linko again asked what were his options. He said this several times according to Jack. Jack continued telling him there were no options. Jack said Linko was very upset and his voice was slightly elevated. Jack said the conversation ended with Linko quitting and asking if Jack wanted his badge now or later. Jack told him to give it to him now.

Jack's secretary, Eileen Lariviere, testified that she overheard the August 31 conversation and heard Jack tell Linko that he had to work in the vault and heard Linko tell Jack he was not going to work in the vault and what were his options. She heard Jack say there were no options. She then heard Linko ask if he should turn in his badge and also heard Linko tell Jack he quit. According to Lariviere, Linko called her about 3 weeks later and ask that she be a witness for him to the fact that Jack fired him. She declined because Linko was not fired.

Linko then went to the garage to see the mechanic who worked there, Mark Jozwik. According to Linko, he wanted to say goodbye and told Jozwik that he and Jack had had a disagreement and Jack had terminated him. According to Linko, Jozwik said, "Good luck." At that point Jack came into the garage and Linko left. Mark Jozwik testified that on August 31, Linko walked into the garage and said, "I turned my badge in. I quit."

Jack denies that Linko was terminated and testified that if he had been willing to continue doing the reports in the vault he would still be working for Wells Fargo. I credit the testimony of Jack, Lariviere, and Jozwik and thus find that Linko

<sup>19</sup> Only management positions with Wells Fargo are salaried. At the time, only Jack, Riley, and Small were salaried.

<sup>20</sup> Linko is a highly educated person who had previously held a upper management position with a large insurance carrier in Connecticut.

<sup>21</sup> Linko first testified that this accommodation was offered by Jack on August 31, then later changed the date to August 30. In any event the offer itself is not questioned.

quit. There is no showing that the move of the site of Linko's work from the garage to the vault area was for any reason other than that asserted by Jack and the Company's fleet supervisor. There is no showing that the move would have made Linko's work more onerous or unpleasant. There was an affirmative showing by Respondent that it offered to in effect create an office for Linko in the vault area to calm his concerns about the move. These certainly do not appear to be actions taken to retaliate against Linko for his union support. For these reasons, as well as others set out above, I do not find that Linko was constructively discharged. I will recommend dismissal of the complaint allegations concerning George Linko.

#### 4. Discharge of John Wells

##### a. *The alleged motive for discharging Wells*

John Wells was hired as a messenger guard in July 1993 and was discharged by Respondent on January 20, 1995, having been caught not wearing his protective vest, an offense for which immediate discharge is a disciplinary option. On January 24, 1995, he testified in this hearing pursuant to a subpoena from the General Counsel that was served on him on January 17, 1995. Wells testified that on January 18, he turned in a request to take off January 23 with Sal Urso, a vault custodian for Respondent. Later that day, he asked Riley if the request had been approved. According to Wells, Riley said there was not much notice and that Wells was already scheduled to work on January 23. Wells told him that the reason he wanted off was because he had been subpoenaed, and Riley said that would not be a problem, and for Wells to bring in the subpoena. The following morning, January 19, Wells brought the subpoena to Urso, who photocopied the subpoena and left the copy on Riley's desk.<sup>22</sup> Ralph Mariani was present when Wells gave the subpoena to Urso. According to Wells, Urso commented, "Oh, you got subpoenaed to go to court for Simms and Strimike." And he continued, "[Wells] should plead the fifth and not tell them anything." Wells said he was not going to lie and that was it. Curiously, as far as I can determine from the record, no one asked Mariani or Urso about this statement, and it stands as stated by Wells.

There is a question in my mind whether the advice was given as a friendly tip by a fellow union member, for Urso has been a member of the Union since it began and voted in the election. Or was it a veiled threat by a supervisor or agent of Respondent? This statement is relied on by the General Counsel as an indicia of Respondent's animus toward the Board processes as there is no evidence to suggest that Wells' status as a union member played any part in the decision to discharge him and there is no evidence to show that Respondent even knew that Wells was a union supporter. Only the timing of Wells discharge suggests that his subpoenaed

appearance in the upcoming hearing played any part in the discharge decision. Assuming that the statement was made and assuming, without any proof that it is true, that Urso was suggesting that it would be in Wells' best interest not to say anything, does this establish that Wells' discharge the next day was motivated by the prospect that Wells was going to testify in this proceeding. Jack certainly denied it and I am at a loss to determine what Respondent would have gained by firing a witness before it knew what he was going to say. If Wells were not going to be a hostile witness before his discharge, he certainly would become one after it.

Ralph Mariani was also subpoenaed to testify and did testify adversely to Respondent in the earlier hearing. He testified that he did not tell anyone that he had been subpoenaed. Jack testified that he knew on January 20 that both Wells and Mariani were to testify in the first hearing, though he could not recall if he had seen a copy of Mariani's subpoena. In any event, he took no retaliatory action against Mariani for testifying, though as will be shown below he had existing grounds to discipline Mariani if he had chosen to do so. Jack testified that he did not know that Wells was a union supporter nor was he aware that Wells voted in the election. As will be discussed fully below, I do not believe that Jack discharged Wells for union activity or in retaliation for his subpoenaed testimony before the Board.

##### b. *Events leading to the discharge of Wells*

According to Wells he had not been told by anyone with management that he was being disciplined prior to his discharge on January 20, 1995. With respect to the matter of safety vests, Wells testified that he first received a company-supplied vest in the fall of 1993. Until Jack arrived in the spring of 1994, he was allowed to take the vest home with him and bring it to work each day. Jack changed this procedure and required that the jackets be kept at the Bloomfield facility, where they were checked out to the drivers each day and checked back in at the end of the workday. Wells also has a personal safety vest of a different type than that supplied by the Respondent. It is far less bulky and fits under his shirt. The vests provided by the Company resemble a live preserver jacket worn by water skiers.

In the summer of 1994, Wells told Jack that he was wearing his personal vest in addition to the company vest while working. Jack did not comment. According to Wells, in the late fall of 1994, he told Urso he was wearing his personal vest while working because he had gained too much weight to continue wearing his company vest. Urso did not comment. As he could not continue to wear the company vest, in December 1994, he asked Jack's secretary to order a new one. Jack overheard the request and told him to come in the next week to be measured for a new vest. He testified that Jack did not tell him what to wear until the new vest arrived. At least up to the point he left the facility each day, he was wearing either his original, company-issued vest or one that was issued him on a daily basis by the vault custodians. He testified that none fit him properly.

About a week or two later, he received a new vest. According to Wells, this one did not fit because it was too long and interfered with his ability to retrieve his pistol from its holster. On making this discovery, he informed Jack's secretary and she ordered him another vest. She told him it would take about 5 weeks to get the new vest because it was

<sup>22</sup> There was a question raised about the supervisory status of Urso. The General Counsel contends that he was statutory supervisor and Respondent denies it. I do not believe that he possessed any of the indicia of supervisory status. There is undeniable evidence, however, that Respondent informed employees that he was a supervisor, and thus, he was cloaked by Respondent with authority to speak for it. As a result of this apparent conferring of authority on Urso, Respondent at least established Urso as its agent within the meaning of Sec. 2(13) of the Act.

being ordered with a group of other vests for other employees.

Following this, Wells complained to the vault custodians that his company vest did not fit. According to Wells, they are to relay this message to management.<sup>23</sup> During this period, although Wells' testimony is confusing, he would be issued a vest daily though none of the company vests fit, and seldom would wear it while working. Wells relies on language in the employee handbook as somehow excusing his failure to wear the vest. Under the heading "Body Armor Use," paragraph 4, the handbook states: "All associates who are issued body armor will wear the body armor in the proper manner (closed fastened, and secured) during the entire work day (to include lunch, refreshment and rest breaks) while employed by Wells Fargo." Paragraph 9 of the same section provides, "Any person observed not wearing body armor in the proper manner will be discharged. Associates will report any damage or flaws in the body armor to the issuing vault associate. The vault associate will notify the branch manager of such damage."<sup>24</sup> Jack testified that after Wells informed him his vest no longer fit in December and they ordered him a new one, Wells never told him the new one did not fit. Jack was apparently unaware that a second new vest had been ordered. There is no contention that Jack or any one else in management authorized Wells to either not wear a protective vest or wear his own vest in lieu of a company vest.

About the second week of January 1995, Wells was assigned a route different from his usual route. He had been serving as messenger guard on a route to Vermont.<sup>25</sup> His new route was in Connecticut and his driver was Ralph Mariani. On January 20, he asked the vault custodian, Rick Yarkin, for a vest and was given vest 30. Wells complained that it did not fit nor did any of the other company vests fit him. According to Wells, Yarkin did not respond. Yarkin is a union steward. Mariani testified that Wells was given several vests to try on that morning, but none fit. He further testified that Urso initially gave Wells a vest, but that Yarkin took over and eventually gave Wells the vest he left with, vest 2. Though Mariani testified that Wells commented that the vest was too big, he neither tried it on or requested another one. The guards are required to initial a form when they check out a vest and Wells contends that the form for January 20 was filled out by Urso when Yarkin was momentarily away. Wells initialed the form without looking at it.

Wells and Mariani then proceeded to run their route. About 4 p.m. that day, they were inspected by Riley and Jack. The credible evidence of record establishes that such inspections were a regular part of management duties to en-

sure that employees comply with company policy. Wells first observed Riley as he exited the customer's location and was returning to the truck. Riley was talking with Mariani. When Wells arrived at the truck, he deposited the liability in the truck and then talked with Riley. Riley asked if he was carrying the company-issued pistol, and Wells said he was. Riley asked to see the weapon and Wells showed it to him. Noting Wells was not wearing a company safety vest, Riley asked him where it was. Wells said it was locked in a compartment in the truck and he did not have the key. He told Riley that the vest issued him that morning did not fit. Riley told him to see him when he finished the route. Wells noted that Jack was in a company vehicle observing the conversation.

Mariani testified that while Wells was in the customer's facility, Riley approached the truck and told him he was conducting a surveillance check. He asked if Wells was carrying anything other than his company-issued weapon. Mariani told him that Wells was wearing the company gun. Riley asked if Wells was wearing his vest. Mariani said no, and proceeded to explain that Wells had tried on several vests that morning and that none fit him. He told Riley that the last vest given Wells by Yarkin was extra large and real dirty and nasty, with all kinds of rips in it. This vest was exhibited at the hearing and was none of the above. It appeared to be in reasonably good condition, though it was too big for Wells. According to Mariani, Wells knew by looking at the vest that it would not fit. As noted earlier, vest 30 was also exhibited and did appear to be a size that would fit Wells. Wells did not try this vest on at the hearing. Mariani told Riley that the vest was locked in a compartment in the rear of the truck. Mariani asked if Wells was going to be terminated and according to him, Riley said, "Well, no, I am just going to talk to Wells. He knows the policy." When Wells came to the truck, Riley asked him why he did not have his vest on and Wells explained. He also explained that he put it in a compartment that he did not know would lock and for which they did not have a key. Riley told him that he wanted to see the vest when they returned to base.

Riley testified that neither Mariani nor Wells said that the vest issued to Wells that day did not fit.

Wells ended his run about 7:30 that evening and asked to see the form he had initialed that morning when he checked out the vest. It showed that something had been scratched out and the number 30 written in. He later discovered that Urso had written in "personal vest," then scratched it out and entered vest 30 instead. Wells then checked in his liability. Riley came into the vault and asked him which vest he had checked in. Wells gave him vest 2 and Riley asked him where vest 30 was, as that was the vest the form indicated had been checked out to Wells. Wells said that he had not been given vest 30. Riley told him to finish in the vault and come to Jack's office. In the interim, vest 30 was found on the rack where the vests are stored overnight.

Wells said he then went to the last couple of minutes of a safety meeting being conducted by Jack. He heard Jack announce that he was leaving the facility and that Riley was being promoted to his job. According to Wells, Jack also announced that Urso would be retained as vault supervisor. After the meeting concluded, Wells went to Jack's office. Wells told Jack that he wanted Mariani to be present as a union representative. He testified that Jack started screaming,

<sup>23</sup> This message had already been relayed to Jack as he had ordered Wells a new vest.

<sup>24</sup> The vests assigned to Wells were displayed in the hearing and did not have any noticeable flaws. One appeared to large for Wells and the other appeared to be approximately the right size for him. The more properly sized vest was the one originally issued Wells on the day he was discharged for failing to wear a company-issued vest.

<sup>25</sup> This change in assignment was prompted by complaints from Respondent's main customer in Vermont about various aspects of Wells' performance. The complaints were serious enough to cause Respondent to fear the loss of the account. Wells was counseled about these problems in December or early January.

"There is no union. There's no contract."<sup>26</sup> Wells then left and went to his car for a couple of minutes. While so engaged, he encountered Riley and Mariani. The three of them returned to Jack's office.

Mariani remembered that when Wells approached him in the parking lot and told him that he wanted him to be a witness at the meeting. According to Mariani, Wells said that "Jack said he can have a Union representative."

Mariani remembered the meeting beginning by Jack telling Wells, "I don't know, I brought you back to Connecticut and I caught you not following Wells Fargo policies. What do you have to say about that?" According to Mariani, Wells tried to explain, but Jack would not listen. He showed Wells the policy calling for termination for not wearing the vest. When Wells asked if he was being terminated for not wearing the vest, Jack said, "[N]ot really," and began telling about the problems that Wells had caused in Vermont.

Wells evidently did have the opportunity to offer some explanation about the vest as he testified he told Jack that he had been issued vest 2. Jack then called Urso who subsequently came to the meeting and told them that Wells had first been given vest 30, but Wells rejected that vest and was then given 2. I believe that this is what happened on the morning of January 20.

Jack said that Wells was carrying unauthorized weapons, that he was not in uniform, and that he had upset customers on the Vermont run. Wells admitted that he had been counseled about problems with his performance on the Vermont run. He had been taken off this run and placed on a Connecticut run because of the problems. Mariani testified that Jack told Wells he was a problem in Vermont and the Company had brought him back to Connecticut to straighten him up. Wells was trying to defend himself on these charges, but Jack did not want to hear it.

Mariani attempted to interject himself in the meeting and Jack said to him, "I am shocked with you. You have nothing to say. You have been setting a bad example out there Ralph. Of all people, you have been back-stabbing me. I am the one that got you this job back. You are running up my cellular phone." Mariani admitted using the company phone to call his wife. Jack also criticized him for letting Wells go into the field without wearing the vest. Mariani told Jack that he wasn't here for himself, he was there for Wells. Jack did not respond, and instead told Wells that he did not have anything for him. Mariani evidently did get to say something as he told Jack that if he had been aware that Wells was in trouble with the Company, he would have made him wear the vest.

According to Wells, Jack then said to him, "I have nothing here for you anymore. I have no more work for you to do." Wells' termination form, dated 1-23-95, states that Wells was discharged for violation of company rules and policies, noting "Found in Bridgeport not wearing his Company issued vest. Found wearing his own vest which is not authorized." Wells admitted knowing that not wearing his company vest while working was grounds for immediate discharge. Wells was also aware that his own, lightweight vest, was not considered acceptable under company policy.

<sup>26</sup> I do not credit this assertion based on Mariani's testimony that indicated that Jack did not object to a union representative's presence at the meeting.

When the meeting ended, Jack allegedly warned Mariani, "If anything comes out of here that was said in here you will be back in here." Mariani felt that his job was in jeopardy at this point.<sup>27</sup>

*c. The General Counsel's evidence of disparate treatment with respect to Wells*

Richard Russell is a messenger guard employee of Respondent and is vice president of the Union and has held that office since about September 1994. He testified that if caught without a vest during work, you will be fired. Russell testified that he too had been assigned a vest that was too large for him in the summer of 1994. He complained about this to Riley and Jack. Jack told him he would have to wait for a fitting for another vest.

Russell told of an incident on August 31, 1994, when Jack stopped the truck on which he was messenger guard for inspection. He was riding in front in violation of company rules and was not wearing his vest. Jack told him he could be fired for the two violations. Russell told Jack that he was given permission to ride in front by Riley, which was true. Jack told him to ride in the back of the truck for the remainder of the run, which he did. When he returned to Bloomfield, Jack told him that he would be disciplined for not wearing the vest, but the discipline would have to be decided on by higher management. Jack also told him that wearing the vest was for his own safety.

On September 2, 1994, Russell met with Jack and Riley. Jack gave him a long speech about why he should wear the vest and then gave him a 30-day probation. The probation form states:

Richard Russell was found on 31 August in New Haven not wearing a vest by myself, Douglas L. Jack. This offense is considered for immediate termination; however, I am and have considered all his previous actions and have made the decision to place him on 30 day probation as my discipline imposed.

Manuel Oliveira is a former employee of Respondent. He was hired on June 16, 1994, as a driver guard. He became a messenger guard thereafter. With respect to safety vests, he understood company policy to be that you must wear your vest while working or you would be discharged. He testified that he was assigned a vest by a vault custodian on a daily basis. Sometimes these vests fit and sometimes they did not. On January 7, 1995, Oliveira was assigned a route to run with Ralph Mariani. The vault custodian failed to assign him a vest, and he did not ask for one. He thus departed on his run without a vest. Oliveira and Mariani drove about an hour and then stopped for some coffee. While Oliveira was getting the coffee, Jack called the truck by cellular phone. Jack asked him if he had a vest and Oliveira said no, adding that the vault custodian did not give him one and he did not sign

<sup>27</sup> No one denied that this statement was made and I accept it as fact. As Mariani was engaged in protected activity representing Wells as a union officer, Jack's warning to him is unlawful. If Jack meant that some of what was said in the meeting was confidential, he should have made that clear. As it stands, Mariani was threatened with an unspecified reprisal if he repeated anything he heard in the meeting while acting in his representational capacity. I find that Jack's statement violated Sec. 8(a)(1) of the Act.

one out. Jack told him that it was his responsibility to get a vest and he was to return to base immediately and get a vest. Jack said he would be fired if he did not comply, and would be fired if he left without a vest again. Even though Oliveira got into a shouting match with Jack over the phone, he was not disciplined for this incident. Jack testified that after the phone conversation with Oliveira, he spoke with Union Steward Yarkin about the problem. Yarkin asked if he could talk with Oliveira and Mariani to try to solve the problem. Jack told him to do so.

Oliveira was active on behalf of the Union. He signed an authorization card, voted in the election, and spoke in favor of the Union with other employees and attempted to have them sign authorization cards.

Again, I believe that the best evidence reflects that Wells was fired for not wearing his vest and for a poor performance record and not for discriminatory reasons. The two incidences of disparate treatment prove, if anything, that Jack was not out to fire union supporters. If he were so engaged, he could have fired two union officers, Mariani and Russell, and another active supporter, Oliveira. That he did not, and did not take any adverse action against Mariani after his testimony in the first hearing, persuades me that he did not fire Wells because he was subpoenaed to testify or for any other protected activity. I believe that Respondent adequately established that Wells was a problem employee, and Wells own testimony established that he had no regard whatsoever for company policy. I recommend that the complaint allegation concerning Wells' discharge be dismissed.

#### CONCLUSIONS OF LAW

1. The Respondent, Wells Fargo Armored Services Corp. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, United Armed Guards of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. Since August 31, 1994, the Union has been the certified collective-bargaining representative of Respondent's employees in the following appropriate unit:

All full-time and regular part-time messenger guards, driver guards, guards and vault custodians who perform guard duties as defined by Section 9(b)(3) of the National Labor Relations Act, employed by the Employer at its Bloomfield, Connecticut facility; but excluding all other employees, all office clerical employees, sales personnel, mechanics, and all professional employees and supervisors as defined in the Act.

4. Respondent has engaged in conduct in violation of Section 8(a)(1) of the Act by

(a) About June 20, by Vault Supervisor Ernest Small, creating an impression among its employees that their union activities were under surveillance by Respondent.

(b) About January 20, 1995, by Area Manager Douglas Jack, threatening employees with unspecified reprisals because of their union and other protected concerted activities.

5. The unfair labor practices found to have been committed by Respondent are unfair labor practices affecting commerce with the meaning of Section 2(6) and (7) of the Act.

6. The Respondent did not commit the other unfair labor practices alleged in the complaint.

#### REMEDY

Having found that Respondent has engaged in conduct in violation of Section 8(a)(1) of the Act, it is ordered that it cease and desist from such conduct and post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>28</sup>

#### ORDER

The Respondent, Wells Fargo Armored Services Corp., Bloomfield, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating an impression among its employees that their union activities were under surveillance by Respondent.

(b) Threatening employees with unspecified reprisals because of their union and other protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Bloomfield, Connecticut facility copies of the attached notice marked "Appendix."<sup>29</sup> Copies of the notice on forms provided by the Regional Director for Region 34, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and be maintained by it for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>28</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>29</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize



To form, join, or assist any union  
To bargain collectively through representatives of  
their own choice  
To act together for other mutual aid or protection  
To choose not to engage in any of these protected  
concerted activities.

WE WILL NOT create the impression among our employees  
that their union activities are under surveillance.

WE WILL NOT threaten our employees with unspecified re-  
prisals because they engage in union or other protected con-  
certed activities.

WE WILL NOT in any like or related manner interfere with,  
restrain, or coerce you in the exercise of the rights guaran-  
teed you by Section 7 of the Act.

WELLS FARGO ARMORED SERVICES CORP.